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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,407	07/29/2003	Kiyoshi Kusama	00862.002959.1	6364
5514 7590 01/05/2010 FITZPATRICK CELLA HARPER & SCINTO 1290 Avenue of the Americas NEW YORK, NY 10104-3800				
EXAMINER HARPER, LEON JONATHAN				
ART UNIT		PAPER NUMBER		
2166				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/628,407

Applicant(s)

KUSAMA ET AL.

Examiner

LEON HARPER

Art Unit

2166

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 57, 59-63, 65, 77, 79-83, 85 and 86 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 57, 59-63, 65, 77, 79-83, 85 and 86 is/are rejected.
- 7) ☐ Claim(s) 64 and 84 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/19/2009 has been entered. Pursuant to said request 57, 60-62, 64, 77, 79, 81-84, and 86 have been amended. Claim 78 has been cancelled. No new claims have been added. Accordingly, claims 57, 59-65, 77, 79-86 are pending in this office action.

Response to Arguments

Applicant's arguments with respect to claims 57, 59-65, 77, 79-86 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

Claims 64 and 84 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 57, 59-63, 65, 77, 79-83, and 85-86 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6137498 (hereinafter Silvers) in view of US 5,652,881 (hereinafter Takahashi)

As for claim 57 Silvers discloses:

An image processing apparatus which combines material images to generate a mosaic in imitation of an original image (See column 2 lines 21-24); An image storage apparatus (See column 2 lines 35-43), and a communication channel between the image processing apparatus and the image storage apparatus (See column 2 lines 50-60).

means for holding color information of each of a plurality of material images, the color information corresponding respectively to the plurality of material images, and the

color information being retrieved from the image storage apparatus (See column 4 lines 12-18); and division means for dividing the original image into a plurality of blocks (See column 7 lines 55-65) and selection means for selecting subsets of the material images out of the plurality of material images such that each subset of the material images has color information similar to color information of a corresponding block of the plurality of divided blocks based on the color information of each of the plurality of material images and the color information of each of the plurality of divided blocks (See column 4 lines 30-45); first output means for outputting identifications of the subset of the material images selected by the selection means to the image storage apparatus and

combining means for combining material images (See column 7 lines 25-30)

wherein the image storage apparatus includes storage means for storing the plurality of material images (See column 2 lines 49-53) and second output means for outputting the subsets of the material images selected by the selection means out of the plurality of material images stored in the storage means according to the identifications of the subsets of the material images output by the first output means via the communication channel and (See column 4 lines 45-55).

Wherein the combining means combines the subsets of the material images output by the second output means (See column 3 lines 30-40)

Silvers does not explicitly disclose: color information similar to color information of respective blocks divided from the original image based on the color information of

each of the plurality of material images Takahashi however does explicitly disclose: color information similar to color information of respective blocks divided from the original image based on the color information of each of the plurality of material images (See column 5 lines 30-40). It would have been obvious to an artisan of ordinary skill in the pertinent art at the time the invention was made to have incorporated the teaching of Takahashi into the system of Silvers. The modification would have been obvious because the two references are concerned with the solution to problem of data processing, therefore there is an implicit motivation to combine these references. In other words, the ordinary skilled artisan, during his/her quest for a solution to the cited problem, would look to the cited references at the time the invention was made. Consequently, the ordinary skilled artisan would have been motivated to combine the cited references since Takahashi teaching would enable user's of the Silvers system to have the material images grouped according to color component groupings (See Takahashi column 3 lines 1-10).

As for claim 59 the rejection of claim 57 is incorporated, and further Silvers discloses: wherein the color information corresponding to the plurality of material images is obtained from a plurality of scale-down images or a plurality of image characteristic parameters corresponding to the plurality of material images (See column 4 lines 19-30).

As for claim 60 the rejection of claim 57 is incorporated, and further Silvers discloses: wherein said image processing apparatus further includes receiving means for receiving first information corresponding to the plurality of material images from the image storage apparatus (See column 4 lines 30-40).

As for claim 61 the rejection of claim 57 is incorporated, and further Silvers discloses: wherein the receiving means receives the color information corresponding to the plurality material images during activation of said image processing system (See figure 3).

As for claim 62 the rejection of claim 57 is incorporated, and further Takahashi discloses: wherein the storage means stores the plurality of material images by dividing the plurality of material images into a plurality of groups, and the selection means selects the subsets of the material images according to the color information corresponding to a plurality of material images contained in a selected group. (See column 3 lines 1-5 and column 7 lines 35-45).

As for claim 63 the rejection of claim 60 is incorporated, and further Silvers discloses: wherein the receiving means receives a mosaic image generated by the first output means (See column 3 lines 15-30).

As for claim 65, the rejection of claim 57 is incorporated, and further Silvers discloses: wherein a plurality of the image processing means are provided and the image storage means can be shared between said plurality of image processing means (See column 8 lines 20-35).

Claim 77 is an apparatus claim substantially corresponding to the system of claim 57 and is thus rejected for the same reasons as set forth in the rejection of claim 57.

As for claim 79 the rejection of claim 77 is incorporated and further Silvers discloses: An image storage apparatus (See column 3 lines 10-20). Storage means for storing the plurality of material images (See column 3 lines 15-20). second output means for outputting the selected material images determined by the determination means out of the plurality of material images stored in the storage means according to the positions of the selected material images determined by the determination means (See column 8 lines 20-35).

Claims 80-83, 85 is an apparatus claims substantially corresponding to the system of claim 59-62, 65 and is thus rejected for the same reasons as set forth in the rejection of claim 59-62, 65.

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Claims 86 is an image processing apparatus substantially corresponding to the system of claim 57 and is thus rejected for the same reasons as set forth in the rejection of claim 57.

Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LEON HARPER whose telephone number is (571)272-0759. The examiner can normally be reached on Flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hosain Alam can be reached on (571) 272-3978. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LEON HARPER/
Examiner, Art Unit 2166
January 3, 2010